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COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON  
COURT OF APPEALS, DIVISION II  
BY [Signature]  
OF THE STATE OF WASHINGTON DEPUTY

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PETER VANDERHOOF and JANE VANDERHOOF, husband and  
wife,

Appellants,

v.

BERNARD W. MILLS and HEDY L. MILLS, husband and wife,  
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a  
Delaware corporation; PENINSULA MORTGAGE, INC., a  
Washington corporation, FLAGSTAR BANK, FSB; and all other  
persons or parties unknown claiming any right, estate or interest in  
the real estate described in the complaint herein,

Respondents.

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APPEAL FROM THE SUPERIOR COURT  
STATE OF WASHINGTON FOR CLALLAM COUNTY

The Honorable George L. Wood  
Cause No. 10-2-00356-1

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BRIEF OF RESPONDENTS

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## TABLE OF CONTENTS

I. INTRODUCTION .....	2
II. ASSIGNMENTS OF ERROR .....	3
A. Assignments of Error. ....	3
B. Issues Pertaining to Assignments of Error. ....	3
C. Record on Appeal .....	4
III. STATEMENT OF THE CASE .....	5
IV. ARGUMENT .....	9
A. Under CR 41(b)(3), the trial court is permitted to weigh the evidence at the close of the Plaintiff's case. In such instance, review of the trial court's findings is limited to whether they are supported by substantial evidence	9
B. Appellants' failure to provide a separate assignment of error for each finding claimed to be unsupported, precludes further review .....	11
C. Substantial evidence supports the trial court's Findings of Fact .....	13
D. The trial court correctly applied the law of adverse possession and boundary acquiescence to the facts found .....	22
1. Adverse possession has not been established .....	25
2. The Vanderhoofs failed to meet their burden on boundary acquiescence .....	33
3. The Vanderhoofs did not adversely possess the Mills property for eleven years .....	37

4.	The Vanderhoofs lack the necessary privity in order to tack their predecessors' possession to their claim .....	38
----	---	----

V. CONCLUSION .....	43
---------------------	----

## TABLE OF AUTHORITIES

### Cases:

<u>Anderson v. Hudak</u> 80 Wash.App. 398, 907 P.2d 305 (1995) . . . . .	25, 26, 29
<u>Buchanan v. Cassell</u> 53 Wn.2d 611, 335 P.2d 600 (1959) . . . . .	43
<u>Chaplin v. Sanders</u> 100 Wash.2d 853, 676 P.2d 431 (1984); <i>overruled on other grounds in <u>Chaplin</u>,</i> 100 Wash.2d at 861 n. 2, 676 P.2d 431 . . . . .	25, 26
<u>Danner v. Bartel</u> 21 Wn.App. 213, 585 P.2d 463 (1978) . . . . .	32
<u>Draszt v. Naccarato</u> 146 Wn.App., 536, 192 P.3d 921 (2008) . . . . .	43
<u>Du Val v. Miller</u> 208 Or. 176, 300 P.2d 416 (1956) . . . . .	39
<u>El Cerrito, Inc. v. Ryndak</u> 60 Wash.2d 847, 376 P.2d 528 (1962) . . . . .	39, 40
<u>Harris v. Urell</u> 133 Wn.App. 130, 135 P.3d 530 (2006) . . . . .	12, 22
<u>Heriot v. Smith</u> 35 Wash.App. 496, 668 P.2d 589 (1983) . . . . .	35
<u>Houplin v. Stoen</u> 72 Wash.2d 131, 431 P.2d 998 (1967) . . . . .	35
<u>Hunt v. Matthews</u> 8 Wn.App. 233, 505 P.2d 819 (1973), <i>overruled on other grounds <u>Chaplin v. Sanders</u>,</i> 100 Wn.2d 853, 857 (1984) . . . . .	26, 28, 29, 30

<u>In re Dependency of Schermer</u>	
161 Wn.2d 927, 169 P.3d 452 (2007) .....	10, 13
<u>In re Interest of Mahaney</u>	
146 Wash.2d 878, 51 P.3d 776 (2002) .....	12
<u>In re Melter</u>	
167 Wn.App. 286, 273 P.3d 991 (2012) .....	36
<u>Lilly v. Lynch</u>	
88 Wash.App. 306, 945 P.2d 727 (1997), <i>quoting Lamm v. McTighe</i> , 72 Wash.2d 587, 593, 434 P.2d 565 (1967). ....	34
<u>Lingvall v. Bartmess</u>	
97 Wash.App. 245, 982 P.2d 690 (1999) .....	22
<u>Maier v. Giske</u>	
154 Wn.App. 6, 223 P.3d 1265 (2010) .....	29
<u>Merriman v. Cokeley</u>	
152 Wn.App. 115, 215 P.3d 241 (2009); reversed on other grounds, 68 Wn.2d 627, 230 P.3d 162 (2010) .....	22, 35
<u>Muench v. Oxley</u>	
90 Wash.2d 637, 584 P.2d 939 (1978) .....	26, 39
<u>N. Fiorito Co. v. State</u>	
69 Wn.2d 616, 419 P.2d 586 (1966) .....	10, 15
<u>Nelson Constr. Co. v. Port of Bremerton</u>	
20 Wn.App. 321, 582 P.2d 511, <i>review denied</i> , 91 Wn.2d 1002 (1978) .....	11
<u>O'Brien v. Schultz</u>	
45 Wash.2d 769, 278 P.2d 322 (1954) .....	15
<u>Pardee v. Jolly</u>	
163 Wn.2d 558, 182 P.3d 967 (2008) .....	21

<u>Rogers Potato Service, LLC v. Countrywide Potato, LLC</u> 119 Wn.App. 815, 820, 79 P.3d 1163 (2003), <i>citing</i> <u>Sherrell v. Selfors</u> , 73 Wash.App. 596, 600-01, 871 P.2d 168, <i>review denied</i> , 125 Wash.2d 1002, 886 P.2d 1134 (1994) .....	14
--	----

<u>Standing Rock Homeowners Ass'n v. Misich</u> 106 Wash.App. 231, 23 P.3d 520, <i>review denied</i> , 145 Wash.2d 1008, 37 P.3d 290 (2001) .....	13, 25, 26
---	------------

<u>Thomas v. Spencer</u> 69 Wash. 433, 125 P. 361 (1912) .....	38
---	----

<u>Thorndike v. Hersperian Orchards, Inc.</u> 54 Wash.2d 570, 343 P.2d 183, 186 (1959) .....	33
---	----

<u>Waldorf v. Cole</u> 61 Wash.2d 251, 377 P.2d 862 (1963) (quoting <u>Thomas v. Harlan</u> , 27 Wash.2d 512, 519, 178 P.2d 965 (1947)) .....	35, 36
--	--------

**Rules:**

CR 41(b)(3) .....	10
RAP 10.3(a)(5) .....	5
RAP 10.3(g) .....	12

**Other:**

F. Clark, A Treatise on the Law of Surveying and Boundaries § 544 (4th ed. Grimes 1976) .....	39
--	----

## APPENDIX

1.	Findings of fact and Conclusions of Law . . . . .	A1 to A12
2.	Exhibit 7 (photo of fence) . . . . .	A13 to A14
3.	Exhibit 9 (photo of fence) . . . . .	A15 to A16
4.	Exhibit 10 (photo of fence) . . . . .	A17 to A18
5.	Exhibit 12 (deed from Liljedahl to Vanderhoof) . . .	A19 to A22
6.	Exhibit 13A (deed from Liljedahl to Lothrop) . . . . .	A23 to A25

## **I. INTRODUCTION**

The Appellants, Peter and Jane Vanderhoof, claim that an old fence, used by their predecessor to keep cattle from the neighbors yard, became the boundary between their 60 acre parcel and the 4 acre parcel owned by Respondents, Bernard and Hedy Mills. The trial court dismissed the Vanderhoofs case following presentation of their evidence. In support of its decision, the trial court entered substantial Findings of Fact and Conclusions of Law. On appeal, the Vanderhoofs claim the trial court's findings are not supported by the evidence. They ask the Court of Appeals to overturn the trial court's findings and remand the case for completion of the trial.

The Vanderhoofs contend that the old fence, located south of the Mills' driveway in an area of significant trees and underbrush, became the boundary under the doctrines of adverse possession and/or boundary acquiescence. Because they had owned their property for only eight years when the Mills had the boundary surveyed and marked, they seek to "tack" their claim of adverse possession to conduct by their predecessor. The trial court carefully analyzed the testimony of the Vanderhoofs regarding their alleged "possession" and did the same for their predecessor. Weighing the

evidence, the trial court found the facts did not support the legal theories advanced by the Vanderhoofs and declared the boundary to be as legally described in the deed of both parties.

## **II. ASSIGNMENTS OF ERROR**

**A. Assignments of Error.** The Vanderhoofs do not assign error to any of the Findings of Fact made by the trial court and do not discuss any of the trial court's specific findings in their brief. Their only assignment of error is that the "trial court erred in its Findings of Fact and Conclusions of Law ...granting the Defendants/ Respondents Motion to Dismiss Plaintiff's claims against Defendants." *Brief of Appellant page 3.* The Vanderhoofs also do not assign error to the Judgment Quieting Title entered by the trial court and have not designated the same as part of their Clerk's Papers on appeal.

**B. Issues Pertaining to Assignments of Error.** The Vanderhoofs frame the issue on appeal as "[w]hether substantial evidence exists as to whether Plaintiff met the requisite elements of adverse possession" and "[w]hether substantial evidence exists as to whether Plaintiff has established the requisite factual elements to

establish a boundary by mutual recognition and acquiescence..."

*Brief of Appellant page 3.* As discussed below, the primary issue on appeal is not whether substantial evidence could have been found in support of the Plaintiffs' claims. The issue is whether there is substantial evidence to support the trial court's findings which were made after weighing the evidence and which support the conclusion that the Vanderhoofs' had not established a claim under either of the two theories advanced.

**C. Record on Appeal.** The Vanderhoofs have designated as Clerk's Papers certain documents that were submitted as part of their motion for summary judgment which was denied by the trial court prior to trial. These include a Declaration of Jean Liljedahl (CP 186), a Declaration of Dana Lothrop (CP 178) and a Declaration of Gary Colley (Supp CP 181). None of these documents, however, were part of the substantive evidence presented at trial. As such, they are irrelevant to the Vanderhoofs' appeal from the trial court's decision.<sup>1</sup> In addition, the Vanderhoofs have included as part of the Clerk's Papers several exhibits that were rejected by the trial court, which

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Legal memoranda submitted by both parties on summary judgment was referenced at trial and available to the trial judge in reaching his decision at trial.

found them inadmissible. See Exhibits 2, 7 and 8. CP 78. No error is assigned to the trial court's denial of these exhibits and they too are irrelevant to the trial court's decision being appealed.

### **III. STATEMENT OF THE CASE**

It should be noted that the Statement of the Case submitted at pages 3-10 of the Brief of Appellant does not contain references to the Report of Proceedings from the trial. See RAP 10.3(a)(5). Rather than referring to the Report of Proceedings, the Vanderhoofs repeatedly refer to factual arguments made in their summary judgment motion and supporting documentation as indicative of evidence presented at trial.<sup>2</sup> Many of the factual claims made by the Vanderhoofs in their motion for summary judgment were refuted in response to this motion. See CP 107, 115, 141. Judge Wood denied the Vanderhoof's motion for summary judgment with a Memorandum Opinion pointing out that there were issues of fact and substantial weaknesses in their case. CP 100-106. Not once in their "Statement of the Case" do the Vanderhoofs point to evidence presented at trial.

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References to Clerk's Papers, pages 39-49, are references to corresponding pages in Plaintiffs' Brief in Support of Summary Judgment, CP 38-49.

While correctly setting forth the legal descriptions of the respective properties in their brief, the Vanderhoofs fail to point out a key element of the trial judge's decision. See CP 33. The deed which conveyed to the Vanderhoofs their property in 1999, specifically excluded the legally described Mills property in their conveyance. CP 16, *Findings of Fact* 7,8; CP 22, *Conclusion of Law* 8. This issue is discussed in more detail at pages 39-47, infra.

At the close of the Plaintiffs' evidence, the trial court granted the Defendant Mills' CR 41(b)(3) motion to dismiss at the close of the Plaintiff's case. CP 79-84; RP Day 2, 67, 80-91. Although initially questioning whether the Vanderhoofs had even made a prima facie case on one or more of their theories, Judge Wood chose to weigh the evidence and enter Findings of Fact and Conclusions of Law. These are located at CP 13-25 and also attached hereto at Appendix A1 - A13. After reviewing the testimony and the exhibits, which included photographs and maps of the property as well as historical conveyances, Judge Wood made the following findings, among others, to which no error has been assigned:

15. The Lothrop's sold their property to Mel Black and his wife in 1976. No testimony was presented as to the Blacks' recognition of the fence as their south boundary. The

Blacks, together with the Black trust, owned what is now the Mills' property from 1976 to 2001. Similarly, there was no testimony that the Abelsons (who owned from 2001 to 2004) or, that the Donna Nagy Trust, recognized or acquiesced in the fence as the boundary. The Court finds the evidence on mutual acquiescence is insufficient to meet the Plaintiffs' burden of proof. Even viewed in a light most favorable to the Plaintiffs, the Court is unable to find from the evidence that the fence was recognized and acquiesced in as the boundary by the property owners on both sides for the required period of time.

16. The Mills acquired their property from the Donna Nagy Trust in July, 2006. In August, 2007, they had a survey conducted which identified and monumented on the ground the location of their north and south boundaries. The survey showed that the south boundary was south of the old cattle fence by approximately 43 feet at Wasankari road on the west and angled southeast to a point very close to the southeast corner. The survey also indicated a small discrepancy between the survey line and a fence located on the east side of the Mills' property. Shortly after the survey was completed, Mr. Mills erected "No Trespassing" signs along the monumented south boundary. The survey stakes, "No Trespassing" signs, and discussions between the Mills and the Vanderhoofs, put the Vanderhoofs on notice that the Mills claimed ownership to the survey line.

17. Weighing the evidence, the Court finds that the fence originally constructed when the Lothrop house was being built was constructed primarily for the purpose of keeping the Liljedahl cattle off of the Lothrop property. The Liljedahls ran cattle on the entirety of their remaining property with the exception of the area around their house and certain outbuildings where they "fenced out" the cattle. The Court finds that the running of the cattle was not "hostile" in the sense required by the law of adverse possession and did not put the Lothrops or their successors on notice that a claim of ownership was being made adverse to their interests.

18. To the extent that the cattle continued to roam on the Liljedahl property until they sold to the Vanderhoofs in 1999, the Court finds that the extent of this use was insufficient to put the owners of what is now the Mills' property on notice that a claim of ownership was being made adverse to their interests.

19. Weighing the evidence, the Court also finds that other acts of the Liljedahls on their property in the area now in dispute were not such that they would be readily observable by their neighbors to the north or otherwise put those neighbors on notice that a claim of title was being made. The area in dispute was wild and undeveloped. It was located north of an area where a mobile home residence existed with an associated yard which was fenced on the north. While Mrs. Liljedahl testified that her husband took down some alders in the disputed area and the cattle ran up to the fence on occasion, the Court finds that the evidence as a whole shows only sporadic activity by the Liljedahls in this area. There was no evidence of mowing, planting of trees, pruning of brush or maintenance of the fence by the Liljedahls. The weight of the evidence was that the fence was simply allowed to deteriorate. The little activity that did occur was not "open and notorious" or done with sufficient obtrusiveness so as to give notice that an adverse claim of ownership was being made. It was activity that could be seen as random and convenient and not such as to cause alarm that one's title was being challenged.

20. Weighing the evidence, the Court finds that the acts of the Vanderhoofs in the area where ownership is claimed, while more substantial as time went on, did not meet the elements of adverse possession for a continuous period of 10 years. The Vanderhoofs acquired their property in 1999. The first evidence of any activity on their part in the area to which they now claim ownership was sometime in the year 2000 when Mr. Vanderhoof testified he mowed some of the area with a rotary mower on a tractor for the stated purpose of controlling noxious weeds. There is no evidence that this

conduct was observed or should have been observed by the neighbor to the north which at the time was Mr. Black. The testimony shows that Mr. Black was very ill at this time and did not often get out of the house. After Mr. Black died his estate/trust sold the property to the Abelsons in August, 2001. There was testimony that Mr. Vanderhoof planted some saplings in the area south of the fence in 2001 but no indication that this act was observed or should have been observed by the neighbor to the north. The testimony also shows that such saplings grow wild in this area. The Court finds that those saplings growing wild cannot be distinguished from those planted so as to put a neighbor on notice that planting has occurred. Weighing the evidence, the Court finds that the acts by the Vanderhoofs prior to 2003 were not sufficient to put the title owner on notice that an adverse claim of ownership was being made and did not otherwise meet the required elements of adverse possession.

21. There was testimony about the Vanderhoofs mowing in the claimed area in 2003; planting several very small chestnut trees on the west end of the disputed area in 2004; removing an old cedar douglas fir stump and mowing in the northwest corner in 2005; and weed eating along the west portion of fence with placement of irrigation pipe in late 2007. Even if the Court were to use the filing of this lawsuit in March, 2010, as the point in time at which acts of adverse possession by the Vanderhoofs were interrupted, the Court finds there is insufficient evidence to show 10 consecutive years of adverse possession by the Vanderhoofs.

#### **IV. ARGUMENT**

- A. Under CR 41(b)(3), the trial court is permitted to weigh the evidence at the close of the Plaintiff's case. In such instance, review of the trial court's findings is limited to whether they are supported by substantial evidence.**

The trial court dismissed the Vanderhoofs' lawsuit at the close of presentation of their case under CR 41(b)(3). CR 41(b)(3) allows the trial court to either rule as a matter of law as to whether the plaintiffs have established a prima facie case or, in the alternative, weigh the evidence and, as trier of fact, determine and render judgment on the merits. In the latter case, the court is directed to enter findings under rule 52(a).

Application of this rule is more specifically described in the case of In re Dependency of Schermer, 161 Wn.2d 927, 169 P.3d 452 (2007):

In granting a CR 41(b)(3) motion, a trial court may either weigh the evidence and make a factual determination that the plaintiff has failed to come forth with credible evidence of a prima facie case, or it may view the evidence in the light most favorable to the plaintiff and rule, as a matter of law, that the plaintiff has failed to establish a prima facie case. N. Fiorito Co. v. State, 69 Wn.2d 616, 618-19, 419 P.2d 586 (1966); *see also* 4 KARL B. TEGLAND, WASHINGTON PRACTICE: RULES PRACTICE CR 41, at 55 (5th ed.2006). The court must make findings of fact when it enters a judgment on the merits but need not do so when ruling that the plaintiff has failed to state a claim as a matter of law. Id.

If the trial court dismisses the case as a matter of law, review is de novo and the question on appeal is whether the plaintiff presented a prima facie case, viewing the evidence in the light most favorable to the

plaintiff. But if the trial court acts as a fact-finder, appellate review is limited to whether substantial evidence supports the trial court's findings and whether the findings support its conclusions of law. Nelson Constr. Co. v. Port of Bremerton, 20 Wn.App. 321, 582 P.2d 511, *review denied*, 91 Wn.2d 1002 (1978). The entry of findings strongly suggests that the trial court weighed the evidence because no findings or conclusions are required when the court views the evidence in the light most favorable to the plaintiff and rules as a matter of law. Nelson Constr., 20 Wn.App. at 327, 582 P.2d 511.

161 Wn.2d at 939-40.

In dismissing the Vanderhoofs' case, the trial court clearly weighed the evidence. He made extensive findings of fact with corresponding conclusions of law. CP 13-25. The credibility of the witnesses and the weight of the plaintiffs' evidence was for the Court to determine. Review of those findings is under the substantial evidence test.

**B. Appellants' failure to provide a separate assignment of error for each finding claimed to be unsupported, precludes further review.**

RAP 10.3(g) provides as follows:

**(g) Special Provision for Assignments of Error.** A separate assignment of error for each instruction which a party contends was improperly given or refused must be included with reference to each instruction or proposed instruction by number. *A separate assignment of error for*

*each finding of fact a party contends was improperly made must be included with reference to the finding by number. The appellate court will only review a claimed error which is included in an assignment of error or clearly disclosed in the associated issue pertaining thereto.*

(Emphasis added). While Appellants have globally assigned error to the trial court's findings of fact and conclusions of law, they have not set forth or cited by number any specific finding that is claimed to be unsupported or otherwise in error. Uncontested findings are verities on appeal. In re Interest of Mahaney, 146 Wash.2d 878, 895, 51 P.3d 776 (2002). On its face, RAP 10.3(g) precludes further review of the trial court's findings of fact.

Case law, in certain circumstances, has modified the effect of RAP 10.3(g) where the challenged findings are included in the text of the Appellant's brief and the nature of the factual challenge is clear. See Harris v. Urell, 133 Wn.App. 130, 135 P.3d 530 (2006). In Urell, an adverse possession case, the Court waived the appellant's violation of RAP 10.3(g) for failing to set out the number and text of the challenged findings in the "Assignments of Error," finding that another portion of the brief "makes the nature of the challenge clear and includes the challenged findings in the text." 133 Wn.App. at 137. However, similar circumstances do not exist here. Unlike the

circumstances in Urell, none of the trial court's findings that are purportedly being challenged are set out in the body of the Appellant's brief. Nor is there discussion of the evidence or discussion of a factual basis in the record to indicate that the trial court's findings are unsupported. Under these circumstances, the trial court's findings are not subject to challenge and are considered verities on appeal. Standing Rock Homeowner's Ass'n v. Misich, 106 Wash.2d 231, 238, 23 P.3d 520 (2001).

**C. Substantial evidence supports the trial court's Findings of Fact.**

Even if the Court were to waive compliance with RAP 10.3(g), the trial court's findings are supported by substantial evidence. As indicated in In re Dependency of Schermer, *supra*, in a case where the trial court's findings are properly challenged, appellate review is limited to whether substantial evidence supports the challenged findings and whether the findings support the court's conclusions of law.

While correctly describing the substantial evidence test at pages 10-11 of their opening brief, Appellants turn the test on its head by arguing that "substantial evidence exists" to support the

Vanderhoofs' claims. The issue on appeal is not whether there may have been evidence to support the Vanderhoofs claims or whether substantial evidence could have supported other findings. Evidence can be substantial even if another interpretation of the evidence can be made. Rogers Potato Service, LLC v. Countrywide Potato, LLC, 119 Wn.App. 815, 820, 79 P.3d 1163 (2003), *citing* Sherrell v. Selfors, 73 Wash.App. 596, 600-01, 871 P.2d 168, *review denied*, 125 Wash.2d 1002, 886 P.2d 1134 (1994).

Here, the issue on appeal is whether trial court's findings are supported by substantial evidence. In support of their argument at page 12 of their brief that "[s]ubstantial evidence exists indicating the Vanderhoofs established the requisite elements of adverse possession," the Vanderhoofs rehash the same arguments made to the trial court but fail to point out testimony that is contrary to the trial court's findings. In the context of an appeal from a trial court's dismissal after weighing the evidence at the end of the plaintiff's case, the Washington Supreme Court has described the appellate court's role:

At the outset, it will be helpful to an understanding of our disposition of the appeal to once again set forth and clarify the functioning of the trial court, in a nonjury trial, in passing

upon and granting a motion directed to the sufficiency of the evidence at the conclusion of a plaintiff's case. As we stated in O'Brien v. Schultz, 45 Wash.2d 769, 278 P.2d 322 (1954), such a motion under appropriate circumstances may be granted for two very distinct and different reasons.

One, the trial court may weigh the evidence properly adduced in the course and in support of plaintiff's case, and make a factual determination that plaintiff has failed to establish a prima facie case by credible evidence, or that the credible evidence establishes facts which preclude plaintiff's recovery. *In so weighing the evidence, the trial court, as the trier of the facts, is not required to accept all of plaintiff's evidence as true or accord to plaintiff the most favorable inferences that may be drawn from the evidence. On the contrary, in reaching its decision as to the viability of plaintiff's case, the trial court necessarily must appraise the credibility of the testimony and the force of any exhibits, and may believe or disbelieve plaintiff's evidence, resolve testimonial conflicts, evaluate circumstantial evidence, draw reasonable and allowable inferences, and otherwise appropriately determine, as a trier of the facts, the facts revealed and sustainable by the evidence then before the court.* If the trial court adopts this approach and makes apposite findings setting forth the pertinent facts as if found them to be, this court, on appeal, will accept such findings of fact as verities, unless a review of the evidence demonstrates them to be without substantial evidentiary support. And, if, in turn, the relevant and sustainable findings support the judgment of dismissal, this court will not disturb the judgment, for we cannot substitute our findings for those of the trial court... (citations omitted).

N. Fiorito Co. V. State, 69 Wn.2d 616, 618-19, 419 P.2d 586 (1966)

(emphasis added). The issue on appeal is not whether there was evidence that could have supported other findings, as argued by the Vanderhoofs. The issue is whether there is evidence to support the

trial court's findings.

At trial, representing themselves pro se, the Vanderhoofs called four witnesses. They called each other and they subpoenaed and called one of the Mills' predecessors, Dana Lothrop (RP Day 2 at 6-34) and their predecessor, Jean Liljedahl (RP Day 2 at 35-66). CP 88, 90, 94, 96. When asked by Judge Wood if he had any more witnesses, Mr. Vanderhoof replied, "Unfortunately, no." RP Day 2 at 67. As pointed out by Judge Wood in his oral opinion granting the defense motion to dismiss (RP Day 2 at 80-91), the Vanderhoofs did not call any of the previous owners of the Mills property with the exception of Mr. Lothrop who owned the property from 1970 to 1976, and had little recollection of facts relevant to the case.

Mr. Lothrop, who was the brother-in-law of the Vanderhoof's predecessor, Jean Liljedahl, together with his wife, acquired the Mills' property from the Liljedahls in 1970. He testified that he and his wife actually lived in California when they originally bought the property from their in-laws.<sup>3</sup> RP Day 2 at 7, 31. He could not remember how the corners to the property were marked. RP Day 2 at 8. He could

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Jean Liljedahl and Joyce Lothrop were sisters and daughters of the Wasankaris, the original owners of all of the property.

not remember a previous declaration that he had signed and which had been submitted by the Vanderhoofs' then attorney, Mr. Colley, on summary judgment (RP Day 2 at 9). He later testified that he wasn't sure that he had read the declaration before he signed it. RP Day 2 at 27. He testified that he was never shown and he never talked about any corner posts when he acquired the property. RP Day 2 at 11-14. He had some recollection of helping his father-in-law, Mr. Wasankari, build a fence on the south part of the property but testified he "didn't give them a lot of help." RP Day 2 at 14. He testified he had no recollection of ever thinking about the fence as a boundary line. RP Day 2 at 15. He described an electric fence that he and his wife had built elsewhere to contain their horses. RP Day 2 at 19. He recalled that the property they purchased was described to him as "4 plus acres." RP Day 2 at 28. When asked if he thought the boundary should be governed by the survey or the fence he replied, "[t]here's description of the property that's been legally put into effect.." RP Day 2 at 29. He reiterated that there was no fence on the ground when they bought the property. RP Day 2 at 30.<sup>4</sup> His

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The Vanderhoofs argue at page 17 of their brief that Mr. Lothrop "assisted his father-in-law in determining the boundary for the fence" and "considered the

testimony did not support the Vanderhoofs' claims.

The testimony of Jean Liljedahl centered on her and her husband's use of the Vanderhoofs property before they sold it to the Vanderhoofs in 1999 as well as the circumstances surrounding the original construction of the fence. She testified that she "assumed" that the property that she sold to the Vanderhoofs was "between the fences." RP Day 2 at 36. She could not testify as to how the fence was originally located as she had not helped in its construction and did not personally participate in its location. RP Day 2 at 38, 48, 52. Nor was she present when the property being sold to the Lothrop's in 1970 was being identified or defined (RP Day 2 at 38) although she later testified that she was "probably there" but couldn't recall for sure. RP Day 2 at 44. She testified that she and her husband always ran cattle on their property. RP Day 2 at 44-45. When her mother-in-law moved into a mobile home on their property, they

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fence to be the boundary of the properties." No where in his trial testimony does he say either of these things. The citations purportedly supporting these statements are to two summary judgment declarations that had been prepared by Mr. Colley that had not been subject to cross-examination and were not offered or admitted at trial, and to his trial testimony at RP Day 2, p.14 where he not only does not say this but states on the following page, "I can't remember even thinking it – thinking it was a boundary line." Any close reading of the record shows that these arguments are grossly misleading and not supported by actual testimony presented at trial.

erected a fence to keep the cattle away from the mobile home. RP Day 2 at 45. She indicated that when the Lothrops started building their house a year or so after they bought the property, an east-west fence was also constructed to keep the Liljedahl cattle off the Lothrop property. RP Day 2 at 46. She testified that the main purpose of the fences located on their property was to keep their cattle from getting out and other cattle from getting in, and that was the specific purpose of the east-west fence that this was constructed along the south side of the Lothrop property. RP Day 2 at 49.

She described a different constructed around her mother-in-law's home as substantial with the location of that fence resulting in two fences located south of what is now the Mills' property. RP Day 2 at 49-50. She testified that she was never personally involved in maintaining the fence in question and she never personally observed any maintenance by others. RP Day 2 at 50. This was true all the way up until she and her husband sold to the Vanderhoofs. RP Day 2 at 50-51.<sup>5</sup> She agreed that trees had grown up naturally in the

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In their brief at page 15, the Vanderhoofs argue that Mrs. Liljedahl recognized the fence in question as the boundary, citing her testimony at RP Day 2 pp.36-37 and again at p. 59. A close reading of the testimony at pages 36-37, however, shows that the fence she was referring to in this testimony was the west and north

disputed area over the years even though no one had planted them, and confirmed that she, personally, had never planted trees in the disputed area. RP Day 2 at 51-52. She also confirmed that she and her husband had allowed their cattle to run around their entire property. She stated that, rather than fencing them in, they actually fenced them "out" of the areas surrounding their residences and outbuildings. RP Day 2 at 52. She agreed that it was everyone's

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perimeter fences on her parent's property, the Wasankari's, where she had grown up. She was not referring to the fence constructed following the sale of a portion of her parents' property to the Lothrops. The same is true with regard to her testimony at page 59 where she again refers to the fence that was on the north part of the Lothrop property, bordered by the Barrs and the LaRues who had lived north of her parents' property. This testimony does not speak to the boundary at issue which is the south boundary of the property sold to the Lothrops and now owned by the Mills.

In their brief at page 16, the Vanderhoofs also suggest that Mrs. Liljedahl testified that she had participated in maintenance and repair of the fence in question. To the contrary, at page 50, Day 2, of her testimony, she testified:

Q. (by Mr. Johnson) Okay. Now, after the fence was built on the south side of the Lothrop property when they were building their house, did you personally have anything to do with maintaining that fence?

A. No.

While she did testify that she had helped her husband maintain the fence along Wasankari road located on the west (RP Day 2 at 50), at the same time she reiterated with regard to the "other" (Lothrop) fence:

Q. (By Mr. Johnson) So you were not personally ever involved in any kind of maintenance or observing any kind of maintenance along the south part of Lothrop?

A. No. (RP Day 2 at 50)

understanding that the Lothrop's had been conveyed a little over 4 acres, and described the details that led to that conclusion. RP Day 2 at 59-60.<sup>6</sup>

Jane Vanderhoof testified about a conversation she had with Bernard Mills after the survey showed the boundary was south of the old fence. During that conversation, as he was showing her the pink flags placed by the surveyor marking the line, she commented, "well, you know, a line is a line." RP Day 1 at 163.

Findings of fact are reviewed under a substantial evidence standard which requires that "there be a sufficient quantum of evidence in the record to persuade a reasonable person that a finding of fact is true." Pardee v. Jolly, 163 Wn.2d 558, 566, 182 P.3d 967 (2008). The testimony presented at trial in this case clearly provides a sufficient basis to support the trial court's findings. Note should also be made of several of the photographs admitted as exhibits and, in particular, those showing the fence alleged to be the boundary. See e.g. Exhibits 7, 9, and 10. Copies of those exhibits

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The Mills acreage if the fence was their south boundary would be approximately 3.4 acres.

are attached at Appendix A-13 through A-18. They support the trial court's finding that the fence was not maintained as a boundary fence.

**D. The trial court correctly applied the law of adverse possession and boundary acquiescence to the facts found.**

It is well recognized that the doctrines of adverse possession and boundary acquiescence present mixed questions of law and fact. Merriman v. Cokeley, 152 Wn.App.115, 215 P.3d 241 (2009), *reversed on other grounds*, 168 Wn.2d 627, 230 P.3d 162 (2010). Harris v. Urell, 133 Wn.App. 130, 137, 135 P.3d 530 (2006). On appeal in such a case, the appellate court reviews the findings of fact and conclusions of law to determine whether substantial evidence supports the findings and, if so, whether the findings support the conclusions of law. Merriman v. Cokeley, *supra*, at 125; Harris v. Urell, *supra* at 137. A party claiming adverse possession bears the burden of proving each element. Lingvall v. Bartmess, 97 Wash.App. 245, 253, 982 P.2d 690 (1999).

In this case, the trial judge, weighing the evidence, found that essential facts supporting a claim of adverse possession had not been proven. He found that the fence claimed to be the boundary by

the Vanderhoofs was not constructed as a boundary fence but rather was constructed to keep the Liljedahl cattle off the Lothrop property. CP 13, Findings of Fact 11, 17. He found that the running of cattle up to the fence was insufficient to put the Lothrops or their successors on notice that a claim of ownership was being made. CP 13, Findings of Fact 17, 18. He found no evidence of other significant acts or use by the Liljedahls in the disputed area that was readily observable and would put the owners of the Mills property on notice that a claim of ownership was being made. CP 13, Finding of Fact 19. In conjunction with this finding, he characterized the area claimed as being "wild and undeveloped" and pointed to another fence in the area that also separated a mobile home residence from the rest of the property. CP 13, Finding of Fact 19. Judge Wood found that "the evidence as a whole shows only sporadic activity by the Liljedahls in this area" pointing out that "[t]here was no evidence of mowing, planting of trees, pruning of brush or maintenance of the fence by the Liljedahls" and "the fence was simply allowed to deteriorate." CP 13, Finding of Fact 19. He found that the limited activity by the Liljedahls in the disputed area "could be seen as random and convenient and not such as to cause alarm that one's

title was being challenged.” CP 13, Finding of Fact 19. All of these findings are supported by substantial evidence or a lack thereof. The Vanderhoofs have cited no testimony to the contrary.

Judge Wood, as trier of the facts, also made findings based upon the testimony of the Vanderhoofs, as to the nature of their use of the claimed area following their purchase in 1999. CP 13, Findings of Fact 20, 21. Weighing the evidence, he found any acts by the Vanderhoofs prior to 2003 were not sufficient to put the title owner on notice that an adverse claim was being made. CP 13, Finding of Fact 20. He recognized testimony of mowing by the Vanderhoofs in this area in 2003; planting several very small chestnut trees on the west end of the disputed area in 2004; removing an old cedar douglas fir stump and mowing in the northwest corner in 2005; and weed eating along the west portion of fence with placement of irrigation pipe in late 2007. CP 13, Finding of Fact 21. Even if these acts by the Vanderhoofs could be said to meet the elements of adverse possession, Judge Wood found that there was insufficient evidence that such acts had continued for a period of 10 consecutive years. CP 13, Finding of Fact 21. He also found that following the Mills' survey in August, 2007, “Mr. Mills

erected "No Trespassing" signs along the monumented south boundary" and "[t]he survey stakes, "No Trespassing" signs, and discussions between the Mills and the Vanderhoofs, put the Vanderhoofs on notice that the Mills claimed ownership to the survey line." CP 13, Finding of Fact 16.

**1. Adverse possession has not been established.**

In order to establish a claim of adverse possession, the claimant must prove that four conditions are met: "[T]he possession must be (1) exclusive, (2) actual and uninterrupted, (3) open and notorious, and (4) hostile and under a claim of right made in good faith." Chaplin v. Sanders, 100 Wash.2d 853, 857, 676 P.2d 431 (1984). These conditions must be met concurrently for at least 10 years. Chaplin, supra at 857, 676 P.2d 431; RCW 4.16.020. Prescriptive rights are not favored in the law and the burden of establishing each element is on the party claiming to have adversely possessed the property. Standing Rock Homeowners Ass'n v. Misich, 106 Wash.App. 231, 238, 23 P.3d 520, *review denied*, 145 Wash.2d 1008, 37 P.3d 290 (2001); Anderson v. Hudak, 80 Wash.App. 398, 401-02, 907 P.2d 305 (1995). Possession of another's land is presumed to be in subordination to the title of the

true owner. Muench v. Oxley, 90 Wash.2d 637, 642, 584 P.2d 939 (1978), *overruled on other grounds in* Chaplin, 100 Wash.2d at 861 n. 2, 676 P.2d 431. Where the land is vacant, open, unenclosed, and unimproved, use by another is presumed permissive. Standing Rock Homeowners Ass'n v. Misich, *supra* at 239. Under such circumstances, evidence is required indicating that the use was "indeed adverse." *Ibid*.

Adverse possession requires that the true owner be put on notice that a claim of ownership adverse to his title is being made or, at the very least, that "a person of ordinary prudence" would be on notice that a hostile claim of ownership was being made. Muench v. Oxley, *supra* at 642; Hunt v. Matthews, 8 Wn.App. 233, 505 P.2d 819 (1973), *overruled on other grounds* Chaplin v. Sanders, 100 Wn.2d 853, 857 (1984); A claimant can satisfy the "open and notorious" element by showing either (1) that the title owner had actual notice of the adverse use throughout the statutory period or (2) that the claimant used the land such that any reasonable person would have thought he owned it. Anderson v. Hudak, 80 Wash.App. 398, 404-05, 907 P.2d 305 (1995).

Weighing the evidence, Judge Wood found that the original

purpose for constructing the fence was to keep the Liljedahl cattle off the newly acquired property of their in-laws, the Lothrop's. Under these circumstances, he found that the running of cattle on the Liljedahl side of the fence was not a sufficiently "hostile" act so as to impart notice of a claim of ownership. Finding of Fact 17, CP 19. He also found no substantial evidence of any other use of the property during the Liljedahl's ownership that would impart to the owners of the neighboring land a claim of ownership. Findings of Fact 18, 19. As he stated in Finding 19:

... other acts of the Liljedahls on their property in the area now in dispute were not such that they would be readily observable by their neighbors to the north or otherwise put those neighbors on notice that a claim of title was being made. The area in dispute was wild and undeveloped. It was located north of an area where a mobile home residence existed with an associated yard which was fenced on the north. While Mrs. Liljedahl testified that her husband took down some alders in the disputed area and the cattle ran up to the fence on occasion, the Court finds that the evidence as a whole shows only sporadic activity by the Liljedahls in this area. There was no evidence of mowing, planting of trees, pruning of brush or maintenance of the fence by the Liljedahls. The weight of the evidence was that the fence was simply allowed to deteriorate. The little activity that did occur was not "open and notorious" or done with sufficient obtrusiveness so as to give notice that an adverse claim of ownership was being made. It was activity that could be seen as random and convenient and not such as to cause alarm that one's title was being challenged.

At page 13 of their brief, the Vanderhoofs argue that “the grazing of cattle, the corresponding perimeter fencing, and the Liljedahls and Vanderhoofs continued maintenance of the disputed area is sufficient to satisfy the elements of hostility and open and notorious.” There is no evidence in the record, however, of any “continued maintenance” of the disputed area by the Liljedahls after the initial construction of the fence. Mrs. Liljedahl testified that she personally provided no maintenance and that she had not observed others providing maintenance. RP Day 2 at 50. There was no other evidence of mowing, planting of trees, maintenance of underbrush or other activity that would indicate some form of “possession” under a claim of ownership. Finding of Fact 19. In Hunt v. Matthews, *supra*, the Court pointed out

When a claimant does everything a person could do with particular property, it is evidence of the open hostility of his claim. If he does less, the trier of the fact is justified in concluding that an owner would not be expected to take alarm from such random activity.

8 Wn.App. at 237 (citation omitted). Here, the Liljedahls simply built a fence to keep their cattle off of the neighbor’s property and did very little, if anything else. See Maier v. Giske, 154 Wn.App. 6, 223 P.3d 1265 (2010) holding that planting a tree and maintenance of plants in

an area of wild vegetation was insufficient to establish adverse possession. As trier of fact, Judge Wood was justified in finding the evidence in this case was insufficient to provide the notice required in order for the conduct to ripen into of a claim of ownership.

As to any argument that the erection of the fence, in and of itself, was sufficient to constitute possession of the land, that is simply not the case, especially where the fence was allowed to deteriorate and the adjacent land was not maintained. Again, the discussion by the Court in Hunt v. Matthews is instructive:

*"The erection of a fence is also a circumstance to be considered by the trial court in ascertaining if the claim was open, notorious and hostile. The fence in question was not erected or improved by the plaintiff but was allowed to deteriorate. Its existence, under the circumstances, would not convey notice of a claim by the plaintiff."*

8 Wn.App. at 238-39 (emphasis added).

Nor does the existence of trees in the area in dispute support a claim of adverse possession. The planting of trees on a neighbor's land, which trees are allowed to grow naturally and are not pruned or maintained so as to indicate a claim of ownership, does not constitute "actual" or "hostile" possession of the land so as to support a claim of adverse possession. Anderson v. Hudak, 80 Wn.App.

398, 907 P.2d 305 (1995). Here, there is no evidence that trees were ever planted in the disputed area until after the Vanderhoofs acquired the property, and then not until 2003. Prior to that, trees were simply allowed to sprout naturally and grow wild. As stated by the Court in Anderson where the adverse claimant had actually planted but not maintained the trees:

Based upon the cases cited, a person claiming adverse possession must and would take some steps to care for the trees. Thus, Anderson did not do "everything a person could do" with the line of trees. (citation omitted). Anderson therefore fails her burden of proving hostile possession, and the trial court erred in finding that Anderson proved all elements of adverse possession.

80 Wn.App. at 404. The Anderson court went on to find that the same facts failed to establish "open and notorious" use as well. 80 Wn.App at 405. By analogy, the planting of trees in Anderson could be likened to the construction of the fence here. It was simply constructed and allowed to deteriorate. No steps were taken to care for or maintain it. As such, it did not impart notice of hostile possession or a claim of ownership being made.

In Hunt v. Matthews, *supra*, the Court considered a plaintiff's claim of adverse possession based upon mowing and planting a garden in an area of the defendant's property that was an extension

of the plaintiff's lawn. The plaintiff claimed that the adverse possession extended to an old fence line that was located on the defendant's property albeit the fence had fallen into a state of disrepair. The trial court dismissed the plaintiff's case at close of presentation. The Court of Appeals affirmed. In its opinion, the Court discusses the principle that the acts of possession must be such as to put the title owner on "notice" that a claim adverse to his ownership is being made. The Court asks the question.

Were the actions of the one claiming title by adverse possession sufficiently apparent and blatant to give notice to the original title holder that he was being challenged? The acts constituting the warning which establishes notice must be made with sufficient obtrusiveness to be unmistakable to an adversary, not carried out with such silent civility that no one will pay attention. The intention to claim title to an area must be objectively exhibited by the claimant.

8 Wn.App. at 236 (citation omitted). In the context of the plaintiff's evidence in Hunt, the Court found that mowing of the extended lawn was insufficient to establish adverse possession. "The property must be used beyond the use it would receive because it was handy and convenient and, instead, must be utilized and exploited as by an owner answerable to no one." 8 Wn.App. at 238 (citations omitted). Here, at best the evidence suggests that the old fence was originally

constructed in a location perhaps thought to approximate the boundary but knowing the exact location of the boundary. The purpose of the fence was to keep the Liljedahls' cattle out of the Lothrops' property. There is no competent evidence that the fence was intended to indicate the undisputed boundary, especially when it would result in the Lothrops receiving from their in-laws, less than the 4 acres described in their deed. Nor is there evidence that the Liljedahls intended to adversely possess the property of their relatives, the Lothrops.

At page 20 of their brief, the Vanderhoofs cite the case of Danner v. Bartel, 21 Wn.App. 213, 585 P.2d 463 (1978), in support of their claim that the existence of a fence is sufficient to establish a claim of adverse possession. Every case is unique to its facts. In Danner, the trial court, after hearing the testimony and weighing the evidence, found that the circumstances surrounding construction of the fence and the specific nature of the use in relation to the fence met the requirements of adverse possession in that case. On appeal, the Court granted deference to the trial court's decision, noting "even (i)f we were of the opinion that the trial court should have resolved the factual dispute the other way, the constitution does

not authorize this court to substitute its findings for that of the trial court.” 21 Wn.App. at 216, *citing Thorndike v. Hersperian Orchards, Inc.*, 54 Wash.2d 570, 575, 343 P.2d 183, 186 (1959). (other citation omitted). Danner stands not for the proposition that the existence of a fence establishes adverse possession. It stands for the proposition that the determination of the trial court in cases such as this is to be given great weight and reversed only for compelling reasons.

**2. The Vanderhoofs failed to meet their burden on boundary acquiescence.**

In a sense, this case is really a case of claimed boundary acquiescence, not a case of adverse possession. That is because the underlying basis for the Vanderhoofs’ claim is the argument that no one ever objected to the existence of the fence. Implied in this argument is a claim that it became the boundary by “acquiescence.” Boundary acquiescence, however, requires more than the existence of a fence or other barrier. It requires proof, by clear, cogent and convincing evidence, that the parties acquiesced in the fence as the boundary.

The doctrine of boundary acquiescence requires the plaintiff to establish the following elements:

The line must be certain, well defined, and in some fashion physically designated upon the ground, e.g., by monuments, roadways, fence lines, etc.; (2) in the absence of an express agreement establishing the designated line as the boundary line, the adjoining landowners, or their predecessors in interest; must have in good faith manifested, by their acts, occupancy, and improvements with respect to their respective properties, a mutual recognition and acceptance of the designated line as the true boundary line; and (3) the requisite mutual recognition and acquiescence in the line must have continued for that period of time required to secure property by adverse possession.

Lilly v. Lynch, 88 Wash.App. 306, 316, 945 P.2d 727 (1997), *quoting* Lamm v. McTighe, 72 Wash.2d 587, 593, 434 P.2d 565 (1967).

In the instant case, Judge Wood pointed to what he considered to be insufficient evidence of acquiescence in the fence as the boundary by the Mills' predecessors in interest. See Finding of Fact 15. The only predecessor of the Mills who testified was Mr. Lothrop who testified that he never thought about the fence as the boundary. No testimony was presented by any other witnesses that indicated that subsequent owners of the Mills property (the Blacks, the Abelsons or Donna Nagy or her Trust) had done anything to acquiesce in the fence as a boundary, either through words or conduct.

Where there is a fence between neighboring properties, "

'mere acquiescence in [the fence's] existence is not sufficient to establish a claim of title to a disputed strip of ground'; instead, there must be some action showing that the neighbors recognized the fence as a boundary line. Waldorf v. Cole, 61 Wash.2d 251, 255, 377 P.2d 862 (1963) (quoting Thomas v. Harlan, 27 Wash.2d 512, 519, 178 P.2d 965 (1947)). See also Houplin v. Stoen, 72 Wash.2d 131, 136, 431 P.2d 998 (1967). In Waldorf, the court held there was a lack of proof that the parties had acquiesced in a rock barrier as signifying the property line where the disputed area "was apparently not used and was essentially in its original condition." 61 Wash.2d at 255, 377 P.2d 862. The theory behind the Waldorf holding is that a person may erect a fence for some other purpose than to mark a boundary line; thus, where it is claimed that a fence is the boundary line, there must be evidence that the parties have acquiesced in it as the true boundary line. See also Heriot v. Smith, 35 Wash.App. 496, 501, 668 P.2d 589 (1983) ( the purported boundary must be recognized by the parties as a true boundary and not just a barrier).

This analysis is consistent with the more recent opinion of the Court of Appeals in Merriman v. Cokeley, 152 Wn.App. 115, 215 P.3d 142 (2009) *reversed on other grounds* 168 Wn.2d 627, 230

P.3d 162 (2010). As reiterated by the Court:

Where there is a fence between neighboring properties, “mere acquiescence in [the fence’s] existence is not sufficient to establish a claim of title to the disputed strip of ground” instead, there must be some action showing that the neighbors recognize the fence as the boundary line...

152 Wn.App. at 129, again *quoting* Waldorf v. Cole, 61 Wash.2d.

251, 255, 377 P.2d 862 (1963).

Judge Wood found that evidence of mutual acquiescence was insufficient to meet the Plaintiffs’ burden of proof or, more correctly, burden of persuasion. Finding of Fact 15. Because the Vanderhoofs’ burden of persuasion on this issue is clear, cogent and convincing evidence, reversal of the trial court’s finding on this issue imposes an enhanced standard of review.

When such a finding is appealed, the question to be resolved is not merely whether there is substantial evidence to support it but whether there is substantial evidence in light of the “highly probable” test. In re Welfare of Sego, 82 Wash.2d 736, 739, 513 P.2d 831 (1973); Reilly, 78 Wash.2d at 640, 479 P.2d 1 (recognizing that “[e]vidence which is ‘substantial’ to support a preponderance may not be sufficient to support the clear, cogent, and convincing” standard).

In re Melter, 167 Wn.App. 286, 301, 273 P.3d 991 (2012). In this case, Judge Wood’s finding is supported by substantial evidence and is certainly not subject to reversal under the “highly probable”

standard of error. The fence was constructed to keep the Lothrop's cattle off the Liljedahl property. Its existence, without more, does not create a boundary.

**3. The Vanderhoofs did not adversely possess the Mills property for eleven years.**

At page 25 of their brief the Vanderhoofs make the remarkable statement that they have adversely possessed the disputed area for eleven years (1999-2010). Judge Wood specifically found that any acts of the Vanderhoofs prior to 2003 were not sufficient to put the title owner on notice that an adverse claim was being made (Finding of Fact 20). By implication, he found that any claim of adverse possession would not have begun until 2003, at best. See Findings of Fact 20, 21, CP 20-21. He also found facts indicating that the Mills interrupted any claim of adverse possession in 2007 when they had their survey conducted and placed "No Trespassing" signs along the surveyed boundary, thereby giving the Vanderhoofs "notice that the Mills claimed ownership to the survey line." Finding of Fact 16, CP 18. This finding is supported by Mr. Vanderhoof's own testimony indicating he understood that by putting up the No Trespassing signs the Mills were asserting

ownership to the survey line. RP Day 1 at 89-90, 129.

A claim of adverse possession is interrupted when the true owner "imparts notice" to the one asserting a hostile right with the intention of taking possession. Thomas v. Spencer, 69 Wash. 433, 436, 125 P. 361 (1912). This intention can be indicated by acts or words, either express declaration or acts of ownership inconsistent with a subordinate character. Ibid. The marking of the survey line with pink ribbons and placement of No Trespassing signs on that line by the Mills was sufficient to interrupt any claim of ownership by the Vanderhoofs. Thomas v. Spencer, supra. The trial court made no findings supporting adverse possession by the Vanderhoofs after 2007.

**4. The Vanderhoofs lack the necessary privity in order to tack their predecessors' possession to their claim.**

The Vanderhoofs, who purchased in 1999, could not claim 10 years of adverse possession in their own right. Under the trial court's findings, they did not prove adverse possession between 1999 and 2003 and any claim of adverse possession was interrupted in 2007. Findings of Fact 16, 20, CP 19-20. Because they did not show continuous, successive periods of adverse possession, they would

have to show that the Liljedahls had already adversely possessed the property when they conveyed title in 1999. They would also have to show that the Liljedahls conveyed that adversely acquired title to the them. See Muench v. Oxley, 90 Wn.2d 637, 584 P.2d 939 (1978), where the Court stated:

We have recognized that one who himself did not acquire title by adverse possession may rest a claim to title on the adverse possession of a predecessor in interest. El Cerrito, Inc. v. Ryndak, 60 Wash.2d 847, 376 P.2d 528 (1962). The successor's claim is based on the fact that his predecessor who possessed with the requisite adversity for the necessary period acquired title comparable to that acquired by deed. El Cerrito, Inc. v. Ryndak, *supra*; F. Clark, A Treatise on the Law of Surveying and Boundaries § 544 (4th ed. Grimes 1976).

90 Wn.2d 643-44. However, as stated in Muench v. Oxley, *supra*;

*Once the successor has established his predecessor's title, he must prove that the title was subsequently conveyed to him. El Cerrito, Inc. v. Ryndak, supra; Du Val v. Miller*, 208 Or. 176, 300 P.2d 416 (1956); 2 C.J.S. Adverse Possession § 161a (1972).

90 Wn.2d 644 (emphasis added).

The present case is somewhat unique in that the deed from the Liljedahls to the Vanderhoofs specifically excluded the Mills' property (formerly the Lothrop property) in the legal description. This property, as described in the original conveyance to the Lothrops, was the south 208 feet of the west 880 feet of Tract 7 of Port

Crescent Farm and Dairy Tracts. See Exhibit 13, see *Appendix 23-25*. Because the Liljedahls had carved out this "4 plus" acre parcel for their in-laws, it was specifically excluded in the transfer of title to the Vanderhoofs. Exhibit 12, see *Appendix 19-22*. This specific exclusion in the Vanderhoofs deed of the neighboring property originally conveyed to the Lothrop, precludes the Vanderhoofs from claiming an interest in that property based upon adverse possession by the Liljedahls.<sup>7</sup>

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The description in the Vanderhoofs' deed read as follows:

ALSO EXCEPT that portion thereof conveyed to Dana G. Lothrop and Joyce M. Lothrop, husband and wife, by Deed recorded August 27, 1971 under Auditor's File No. 405954, records of Clallam County, Washington, being more particularly described as follows: That portion of Tract 7 in Section 11, Township 30 North, Range 8 West, W.M. of Port Sound Mill and Timber Company's Port Crescent Farm and Dairy Tracts, as per Plat thereof recorded in Volume 1 of Plats, page 96 ½, records of Clallam County, Washington, described as follows:

Beginning at the Northwest corner of said Tract 7;  
Thence South along the West line thereof 208 feet;  
Thence East parallel with the North line of said Tract 7 a distance of 880 feet;  
Thence North 208 feet to the North line of said Tract 7;  
Thence West along said North line 880 feet to the POINT OF BEGINNING.  
EXCEPT the West 30 feet for County Road.

This same description was used in excepting to exclude this same property in the Liljedahls' conveyance to the Vanderhoofs. Ex 12.

In El Cerrito, Inc. v. Ryndak, 60 Wash.2d 847, 376 P.2d 528 (1962), the plaintiff, El Cerrito, Inc. ("El Cerrito") claimed title to a two-and-one-half-foot strip of land to the north of its legally described property based upon adverse possession by its predecessors, Gilje and Boyd, some years earlier. The trial court found that adverse possession had been established during the ownership of Gilje and Boyd which finding was not significantly disputed on appeal. The appeal focused on the issue of "tacking" and whether successors to Gilje and Boyd could claim an interest in this disputed area. El Cerrito had obtained from Boyd a separate quit claim deed of Boyd's interest in the disputed area. In addition to El Cerrito, there were two other parties, Young and Capretto, who had held title between Gilje and Boyd and El Cerrito and who claimed an interest in the disputed area. Neither Young nor Capretto had obtained any similar conveyance.

Initially, the Court held that the failure to include the disputed area in the deed from Gilje to Boyd did not preclude Boyd from tacking on Gilje's period of adverse possession. 60 Wn.2d at 856. Because Boyd's adversely possessed interest had been conveyed to El Cerrito by a subsequent quit claim deed, El Cerrito was found to

be in "privity" with Boyd and to have obtained the adversely possessed property from Boyd. Significantly, however, the Court held that the other plaintiff-respondents, Young and the Caprettos, had not acquired an interest in the disputed strip stating "as to these parties, privity is lacking." 60 Wn.2d at 856. This was because Young, at the time he acquired from Boyd, had a survey completed that disclosed the encroachment into the disputed area and subsequent conveyances from Young to the Caprettos and from the Caprettos to El Cerrito made the transfer subject to the encroachment. 60 Wn.2d at 857. Because the conveyances specifically excluded the disputed area, the Court held privity did not exist. *Ibid.*

A similar situation is presented here. The conveyance to the Vanderhoofs specifically excluded the Lothrop property. As a consequence, without more, it cannot be said that the Vanderhoofs are in "privity" to any claim to this property. The principal of tacking applies in cases where a deed has mistakenly omitted from the legal description property possessed by the grantor which was intended to be included in the conveyance. The underlying principle is the notion that the grantor intended to convey the adversely possessed

property to the grantee and that the grantee thereby acquired the grantor's rights. See Buchanan v. Cassell, 53 Wn.2d 611, 335 P.2d 600 (1959)

Here, the language in the deed controls. The Vanderhoofs cannot show that their grantor intended to convey to them an adversely possessed portion of property specifically excluded in the deed. Judge Wood reached this conclusion, CP 33, *Conclusion of Law* 8, CP 22. His ruling should be affirmed.

#### **V. CONCLUSION**

The findings of the trial court are supported by substantial evidence. Based upon those findings, the Court's decision is correct as a matter of law and should be affirmed.

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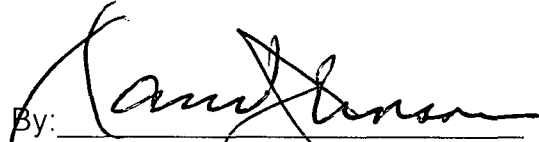
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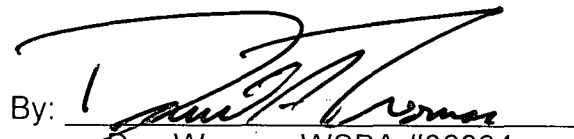
///

RESPECTFULLY SUBMITTED this 17<sup>th</sup> day of September,  
2012.

JOHNSON RUTZ & TASSIE, PLLC  
Attorneys for Respondents Mills

By:   
David V. Johnson, WSBA # 6193

FIDELITY NATIONAL LAW GROUP  
Attorneys for Respondents Mortgage  
Electronic Registration Systems, Inc.  
and Flagstar Bank, FSB

By:   
Dan Womac, WSBA #36394

**CERTIFICATE OF MAILING**

I certify under penalty of perjury under the laws of the State of Washington, that this date I caused to be delivered, via first class mail, to:

Clerk  
WA State Court of Appeals, Div II  
950 Broadway, Suite 300  
Tacoma, WA 98402

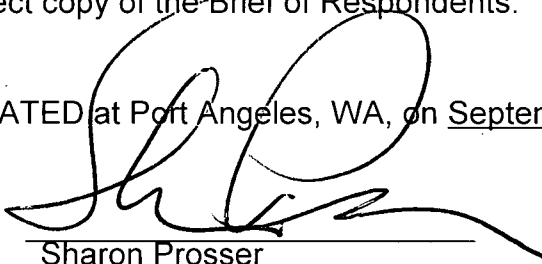
Dan Womac  
Fidelity National Law Grp  
1200 6<sup>th</sup> Avenue, Suite 620  
Seattle, WA 98101

Gary R. Colley, Esq.  
Platt Irwin Law Firm  
403 South Peabody  
Port Angeles, WA 98362

a true and correct copy of the Brief of Respondents.

SIGNED and DATED at Port Angeles, WA, on September 17, 2012.

Signature:  
Print Name:

  
Sharon Prosser

## APPENDIX

1. Findings of fact and Conclusions of Law . . . . . A1 to A12
2. Exhibit 7 (photo of fence) . . . . . A13 to A14
3. Exhibit 9 (photo of fence) . . . . . A15 to A16
4. Exhibit 10 (photo of fence) . . . . . A17 to A18
5. Exhibit 12 (deed from Liljedahl to Vanderhoof) . . A19 to A22
6. Exhibit 13A (deed from Liljedahl to Lothrop) . . . . . A23 to A25

FILED  
CLALLAM CO CLERK

2012 FEB -3 P 1:55

BARBARA CHRISTENSEN

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CLALLAM

PETER VANDERHOOF and JANE  
VANDERHOOF, husband and wife,

Plaintiffs,

v.

BERNARD W. MILLS and HEDY L. MILLS,  
husband and wife; MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC., a Delaware  
corporation; PENINSULA MORTGAGE INC., a  
Washington corporation; FLAGSTAR BANK,  
FSB; and all other persons or parties unknown  
claiming any right, estate or interest in the real  
estate described in the complaint herein,

Defendants.

No. 10-2-00356-1

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

**THIS MATTER** having come before the Honorable George L. Wood for trial on  
November 14 and 15, 2011, the Plaintiffs representing themselves pro se, having  
presented their case in chief and the Defendants having moved for dismissal at the close  
of the Plaintiffs' case; the Court having reviewed the exhibits admitted into evidence; the  
legal memoranda of the Defendants filed in support of the Motion and the legal

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Port Angeles, WA 98362  
Phone: (360) 457-1139  
Fax: (360) 457-1176

1 memoranda of both parties filed in connection with a previous motion for summary  
2 judgment together with the Court's Memorandum Opinion entered thereon; and having  
3 heard, weighed and considered the testimony presented by the Plaintiffs at trial as well  
4 as the arguments advanced by the parties with respect to the motion; and having on  
5 November 15, 2011, entered its oral opinion from the bench granting the Defendants'  
6 motion to dismiss the Plaintiffs' case at the close of Plaintiffs' evidence, and being duly  
7 advised, now enters the following:

### 8 FINDINGS OF FACT

9 1. The Court has jurisdiction over the parties and the subject matter of this  
10 lawsuit which involves title to and claimed interests in real property located in Clallam  
11 County, Washington.

12 2. Defendants Bernard W. Mills and Hedy L. Mills are husband and wife and  
13 constitute a marital community under the laws of the State of Washington.

14 3. Plaintiffs Peter Vanderhoof and Jane Vanderhoof are husband and wife and  
15 residents of Clallam County.

16 4. Defendants Bernard W. Mills and Hedy L. Mills, husband and wife, acquired  
17 real property located in Clallam County which is the subject matter of this litigation by  
18 Statutory Warranty Deed from Donna K. Nagy, dated July 6, 2006, recorded under  
19 Clallam County Auditor's file no. 2006-1183913. The Mills property, as conveyed in that  
20 deed, is legally described as follows:

21 THAT PORTION OF TRACT 7, PORT CRESCENT FARM  
22 AND DAIRY TRACTS AS PER PLAT RECORDED IN  
23 VOLUME 1 OF PLATS, PAGE 96½, RECORDS OF  
24 CLALLAM COUNTY, WASHINGTON, IN SECTION 11,  
TOWNSHIP 30 NORTH, RANGE 08 WEST, W.M.,

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Fax: (360) 457-1176

DESCRIBED AS FOLLOWS: BEGINNING AT THE  
NORTHWEST CORNER OF SAID TRACT 7; THENCE  
SOUTH ALONG THE WEST LINE THEREOF 208 FEET;  
THENCE EAST PARALLEL WITH THE NORTH LINE OF  
SAID TRACT 7 A DISTANCE OF 880 FEET; THENCE  
NORTH 208 FEET TO THE NORTH LINE OF SAID TRACT 7;  
THENCE WEST ALONG SAID NORTH LINE 880 FEET TO  
THE POINT OF BEGINNING; EXCEPT THE WEST 30 FEET  
FOR COUNTY ROAD. SITUATE IN CLALLAM COUNTY,  
STATE OF WASHINGTON.

5. Plaintiffs Peter Vanderhoof and Jane Vanderhoof acquired their interest in  
the property that is the subject matter of this action by Statutory Warranty Deed from H.  
Richard Liljedahl and Jean Liljedahl dated September 17, 1999, and recorded October 1,  
1999 under Clallam County Auditor's file no. 1999-1036950. The interest of another co-  
purchaser at that time, Gerald W. Morris and Marilyn Davis, husband and wife, was  
subsequently conveyed to the Vanderhoofs who, at the time of trial, held the entire  
ownership thereof.

6. The legal description of Parcel A of the property owned and acquired by the  
Vanderhoofs, as set out in their deed, is as follows:

PARCEL A:

Tracts 7 and 10 in Section 11, Township 30 North, Range 8  
West, W.M. of Puget Sound Mill and Timber Company's Port  
Crescent Farm and Dairy Tracts, as per Plat thereof recorded  
in Volume 1 of Plats, page 96½, records of Clallam County,  
Washington, EXCEPT that portion of said Tracts 7 and 10  
described as follows: Beginning at a point in the West line of  
said Tract 10 a distance of 52 feet South of the Northwest  
corner thereof; Thence East parallel with the North line of said  
Tract 10 a distance of 210 feet; Thence North parallel with the  
North line of said Tract 10 a distance of 210 feet; Thence  
North parallel with the West line of Tracts 7 and 10 a distance  
of 98 feet, more or less, to the Southerly line of a private road  
now in use on said Tract 7; Thence Westerly along the  
Southerly line of said private road to the West line of said

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1 Tract 7; Thence South along the West line of Tracts 7 and 10  
2 a distance of 119 feet, more or less, to the POINT OF  
3 BEGINNING. ALSO EXCEPT the West 30 feet of the South  
4 half of the Northwest quarter of the Northeast quarter  
conveyed to Clallam County for road purposes by Deed  
recorded January 3, 1969 under Auditor's File No. 386807,  
records of Clallam County, Washington.

5 ALSO EXCEPT that portion thereof conveyed to Dana G.  
6 Lothrop and Joyce M. Lothrop, husband and wife, by Deed  
7 recorded August 27, 1971 under Auditor's File No. 405954,  
8 records of Clallam County, Washington, being more  
9 particularly described as follows: That portion of Tract 7 in  
Section 11, Township 30 North, Range 8 West, W.M. of Puget  
Sound Mill and Timber Company's Port Crescent Farm and  
Dairy Tracts, as per Plat thereof recorded in Volume 1 of  
Plats, page 96 1/2, records of Clallam County, Washington,  
described as follows:

10 Beginning at the Northwest corner of said Tract 7;  
11 Thence South along the West line thereof 208 feet;  
12 Thence East parallel with the North line of said Tract 7 a  
13 distance of 880 feet;  
14 Thence North 208 feet to the North line of said Tract 7;  
15 Thence West along said North line 880 feet to the POINT OF  
16 BEGINNING.  
17 EXCEPT the West 30 feet for County Road.

18 7. The above referenced deed conveying the Vanderhoofs their property  
19 specifically excluded from their conveyance the property now owned by the Mills, not only  
20 by reference to the sale originally made to the Lothrops but also by a metes & bounds  
21 description.

22 8. Under these circumstances, the Vanderhoofs purchased the property  
23 knowing that the Mills' property, as legally described, was not included in their purchase. \*

24 9. The property of both the Mills and the Vanderhoofs was at one time owned  
by Richard and Jean Liljedahl. The Liljedahls owned a total of approximately 60 acres

\* The Vanderhoofs, however, contended they purchased  
the property believing the fence line to be  
their north boundary.

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1 bordered on the west by Wasankari Road, in the Joyce area west of Port Angeles. In  
2 1990, the Liljedahls conveyed a portion of that property, located in the northwest corner,  
3 to Mrs. Liljedahl's sister and brother-in-law, Dana and Joyce Lothrop. The Lothrops lived  
4 in California at the time. This is the same property subsequently acquired by the Mills.

5 10. At the time of the conveyance to the Lothrops, there was no indication on  
6 the ground or to the Lothrops as to the location of the south boundary of the property  
7 being conveyed. The Lothrops lived in California and did not view the property at the  
8 time of conveyance. The conveyance was by legal description only. The parties  
9 considered the property being conveyed, based upon its dimensions, to be a little over 4  
10 acres.

11 11. Over a year after the Lothrops acquired the property from the Liljedahls they  
12 moved to the state of Washington and began to build a house on the property. At that  
13 time a fence was constructed along the south part of the property in order to keep the  
14 Liljedahl cattle off of the Lothrop property. Mr. Lothrop testified that he did not recall any  
15 personal involvement in the location of this fence. There was testimony that Mr.  
16 Wasankari, the father of Jean Liljedahl and Joyce Lothrop, was involved in the location of  
17 the ~~cattle~~ fence.

18 12. At the time of the 1970 conveyance from the Liljedahls to the Lothrops  
19 there was not in existence on the ground any monument, improvement, structure or fence  
20 identifying or purporting to identify the south boundary of the property being conveyed.

21 13. The Court finds that the evidence is insufficient to establish that at the time of the conveyance  
22 there was a  
23 meeting of the minds between the Liljedahls and the Lothrops as to the identical piece of  
24 property being conveyed on the ground.

1           14. The Court finds that the evidence is insufficient to establish that the  
2 conveyance was made with specific reference to any improvement on the ground as  
3 identifying the south boundary of the property being conveyed.

4           15. The Lothrops sold their property to Mel Black and his wife in 1976. No  
5 testimony was presented as to the Blacks' recognition of the fence as their south  
6 boundary. The Blacks, together with the Black trust, owned what is now the Mills'  
7 property from 1976 to 2001. Similarly, there was no testimony that the Abelsons (who  
8 owned from 2001 to 2004) or that the Donna Nagy Trust, recognized or acquiesced in the  
9 fence as the boundary. The Court finds the evidence on mutual acquiescence is  
10 insufficient to meet the Plaintiffs' burden of proof. Even viewed in a light most favorable  
11 to the Plaintiffs, the Court is unable to find from the evidence that the fence was  
12 recognized and acquiesced in as the boundary by the property owners on both sides for  
the required period of time.

13           16. The Mills acquired their property from the Donna Nagy Trust in July, 2006.  
14 In August, 2007, they had a survey conducted which identified and monumented on the  
15 ground the location of their north and south boundaries. The survey showed that the  
16 south boundary was south of the old cattle fence by approximately 43 feet at Wasankari  
17 road on the west and angled southeast to a point very close to the southeast corner. The  
18 survey also indicated a small discrepancy between the survey line and a fence located on  
19 the east side of the Mills' property. Shortly after the survey was completed, Mr. Mills  
20 erected "No Trespassing" signs along the monumented south boundary. The survey  
21 stakes, "No Trespassing" signs, and discussions between the Mills and the Vanderhoofs,  
put the Vanderhoofs on notice that the Mills claimed ownership to the survey line.

22 *The survey also showed the north line of the Mills*  
23 *property to lie south of the north fence by*  
24 *approximately 43 feet at Wasankari road on the*  
*west and angled southeast to a point very*  
*close to the northeast corner.*

Findings of Fact; Conclusions of Law

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A 6

*Said north fence was approximately 208 fence  
north of the fence at issue to the south.*

1           17.    Weighing the evidence, the Court finds that the fence originally constructed  
2 when the Lothrop house was being built was constructed primarily for the purpose of  
3 keeping the Liljedahl cattle off of the Lothrop property. The Liljedahls ran cattle on the  
4 entirety of their remaining property with the exception of the area around their house and  
5 certain outbuildings where they "fenced out" the cattle. The Court finds that the running  
6 of the cattle was not "hostile" in the sense required by the law of adverse possession and  
7 did not put the Lothrops or their successors on notice that a claim of ownership was  
8 being made adverse to their interests.

9           18.    To the extent that the cattle continued to roam on the Liljedahl property until  
10 they sold to the Vanderhoofs in 1999, the Court finds that the extent of this use was  
11 insufficient to put the owners of what is now the Mills' property on notice that a claim of  
12 ownership was being made adverse to their interests.

13           19.    Weighing the evidence, the Court also finds that other acts of the Liljedahls  
14 on their property in the area now in dispute were not such that they would be readily  
15 observable by their neighbors to the north or otherwise put those neighbors on notice that  
16 a claim of title was being made. The area in dispute was wild and undeveloped. It was  
17 located north of an area where a mobile home residence existed with an associated yard  
18 which was fenced on the north. While Mrs. Liljedahl testified that her husband took down  
19 some alders in the disputed area and the cattle ran up to the fence on occasion, the  
20 Court finds that the evidence as a whole shows only sporadic activity by the Liljedahls in  
21 this area. There was no evidence of mowing, planting of trees, pruning of brush or  
22 maintenance of the fence by the Liljedahls. The weight of the evidence was that the  
23 fence was simply allowed to deteriorate. The little activity that did occur was not "open  
24

1 and notorious" or done with sufficient obtrusiveness so as to give notice that an adverse  
2 claim of ownership was being made. It was activity that could be seen as random and  
3 convenient and not such as to cause alarm that one's title was being challenged.

4       20. Weighing the evidence, the Court finds that the acts of the Vanderhoofs in  
5 the area where ownership is claimed, while more substantial as time went on, did not  
6 meet the elements of adverse possession for a continuous period of 10 years. The  
7 Vanderhoofs acquired their property in 1999. The first evidence of any activity on their  
8 part in the area to which they now claim ownership was sometime in the year 2000 when  
9 Mr. Vanderhoof testified he mowed some of the area with a rotary mower on a tractor for  
10 the stated purpose of controlling noxious weeds. There is no evidence that this conduct  
11 was observed or should have been observed by the neighbor to the north which at the  
12 time was Mr. Black. The testimony shows that Mr. Black was very ill at this time and did  
13 not often get out of the house. After Mr. Black died his estate/trust sold the property to  
14 the Abelsons in August, 2001. There was testimony that Mr. Vanderhoof planted some  
15 saplings in the area south of the fence in 2001 but no indication that this act was  
16 observed or should have been observed by the neighbor to the north. The testimony also  
17 shows that such saplings grow wild in this area. The Court finds that those saplings  
18 growing wild cannot be distinguished from those planted so as to put a neighbor on  
19 notice that planting has occurred. Weighing the evidence, the Court finds that the acts by  
20 the Vanderhoofs prior to 2003 were not sufficient to put the title owner on notice that an  
21 adverse claim of ownership was being made and did not otherwise meet the required  
22 elements of adverse possession.

23       21. There was testimony about the Vanderhoofs mowing in the claimed area in  
24

1 2003; planting several very small chestnut trees on the west end of the disputed area in  
2 2004; removing an old cedar douglas fir stump and mowing in the northwest corner in  
3 2005; and weed eating along the west portion of fence with placement of irrigation pipe in  
4 late 2007. Even if the Court were to use the filing of this lawsuit in March, 2010, as the  
5 point in time at which acts of adverse possession by the Vanderhoofs were interrupted,  
6 the Court finds there is insufficient evidence to show 10 consecutive years of adverse  
7 possession by the Vanderhoofs. *21 A. There was no evidence that the prior owners of the Mills property utilized the property to the south of the fence at issue.*

8 22. There was no evidence presented in support of a claim of adverse  
9 possession on the Mills' east boundary.

10 23. The Defendants Mills are the prevailing parties in this lawsuit.

11 24. Any finding of fact which constitutes a conclusion of law shall be deemed as  
12 such.

13 Based upon the foregoing Findings of Fact, the Court now enters the following:

#### 14 CONCLUSIONS OF LAW

15 1. The Court has jurisdiction over the parties and subject matter of this action.

16 2. A party claiming adverse possession of real property has the  
17 burden of establishing the existence of each element. The elements require a claimant  
18 to prove that his or her possession was: (1) open and notorious; (2) actual and  
19 uninterrupted; (3) exclusive; (4) hostile and under a claim of right; and (5) for a period of  
20 ten consecutive years.

21 3. The presumption of possession is in the holder of legal title. Lack of use by  
22 the true title holder is not evidence of possession by the neighbor. The acts of  
23 possession by the adverse claimant must be such as to put the title owner on "notice"

1 that a claim adverse to his ownership is being made.

2 4. A claimant can satisfy the open and notorious element of adverse  
3 possession by showing either (1) that the title owner had actual notice of the adverse use  
4 throughout the statutory period or (2) that the claimant used the land such that any  
5 reasonable person would assume that person to be the owner.

6 5. The nature of the possession is determined objectively by the manner in  
7 which the claimant treated the land. The claimant's subjective belief regarding the  
8 claimant's true interest in the land and intent to dispossess or not dispossess another is  
9 irrelevant to determine whether hostility has been established.

10 6. Each element of adverse possession must be established for a continuous  
11 period of ten years.

12 7. Although defendants argue that the burden of proof on a claim of adverse  
13 possession should be clear, cogent and convincing evidence, the Court holds that a  
14 preponderance of the evidence in the applicable burden for adverse possession.  
15 Weighing the evidence and applying this burden, the Plaintiffs have failed to show 10  
16 consecutive years of possession meeting the requirements for adverse possession either  
17 by their predecessors or by themselves or any combination.

18 8. In order for one claiming adverse possession to be able to "tack" a period of  
19 adverse possession by his or her predecessor in order to meet the 10 year requirement,  
20 the party conveying the property must have intended to convey and the grantee must  
21 have intended to receive the adversely possessed property. Under the circumstances  
22 presented here the Vanderhoofs were on notice, by virtue of their deed, that the legal  
23 description of the Mills' property was not included in their purchase. Therefore, any  
24

1 attempt by the Vanderhoofs to tack use by the Liljedahls, even if adverse, would be  
2 inapplicable to the Vanderhoofs as the Mills property was specifically excluded from their  
3 conveyance and therefore precludes tacking.

4 9. The true and correct boundary line between the parties is the line legally  
5 described in the Mills' deed, as shown and monumented in the survey performed by Tom  
6 Roorda of Northwestern Territories, Inc., recorded on August 24, 2007, in Book 64 at  
7 page 39, records of Clallam County.

8 10. The burden of proof on a claim of boundary location by common grantor,  
9 although uncertain, appears to be clear, cogent and convincing evidence. Under this  
10 standard as well the preponderance of the evidence standard, the Plaintiffs' evidence is  
11 insufficient to meet the factual elements required in order to establish a boundary based  
12 upon location by a common grantor

13 11. The burden of proof on a claim of boundary acquiescence is clear, cogent  
14 and convincing evidence. Under this standard the Plaintiffs' evidence is insufficient to  
15 meet the factual elements required in order to establish a boundary by mutual recognition  
16 and acquiescence for a consecutive period of 10 years.

17 12. The Plaintiffs have not met their burden of proof on any of the theories  
18 claimed.

19 13. Plaintiffs' Complaint to Quiet Title based upon a claim of adverse  
20 possession, boundary acquiescence and/or boundary location by common grantor should  
21 be dismissed.

22 14. Defendants' counterclaim should be granted. Title should be quieted in  
23 Defendants to their real property as legally described and the boundary established and  
24

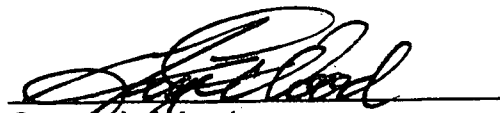
1 confirmed as depicted in the 2007 NTI survey by Tom Roorda, free and clear of any  
2 claim or right on the part of the Plaintiffs or their successors.

3 15. Plaintiffs should be restrained from entry or encroachment on to  
4 Defendants' property as shown in the NTI survey.

5 16. Defendants, as the prevailing parties, are entitled to judgment for their  
6 statutory costs and statutory attorney's fees incurred herein.


7 17. Any conclusion of law deemed a finding of fact shall be treated as such.

8 DONE in open court this 3rd day of ~~January~~ <sup>Feb.</sup>, 2012.

9   
10 George L. Wood  
11 Superior Court Judge


12 Presented by:

13 JOHNSON RUTZ & TASSIE  
14 Attorneys for Defendants Mills

15 By:   
16 David V. Johnson, WSBA #6193

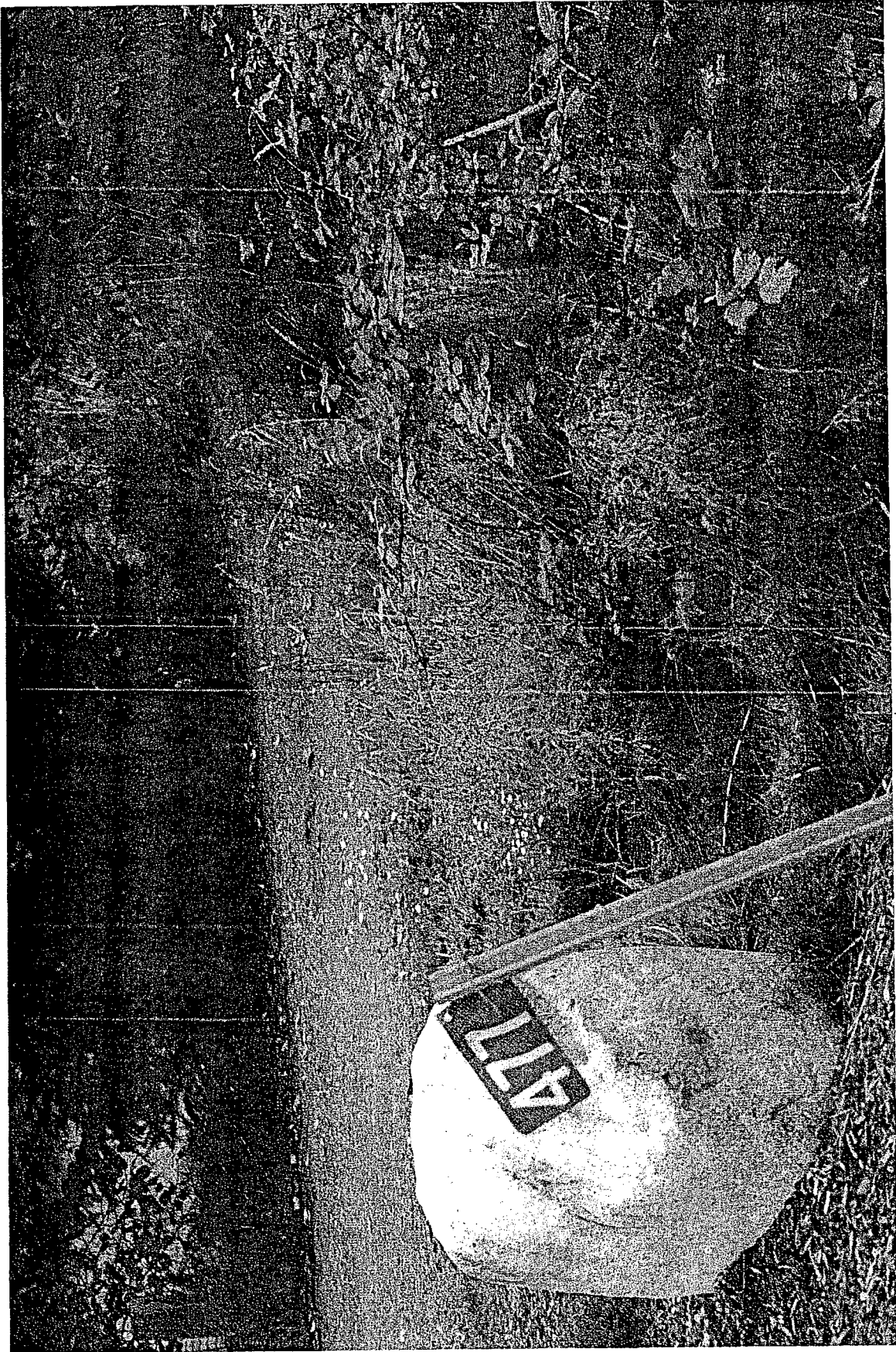
17 Copy received, notice of presentation waived:

18 FIDELITY NATIONAL LAW GROUP  
19 Attorney for Defendants  
20 Mortgage Electronic Registration  
21 Systems, Inc., a Delaware Corporation;  
22 Peninsula Mortgage Inc., a Washington  
23 Corporation; Flagstar Bank, FSB Flagstar Bank

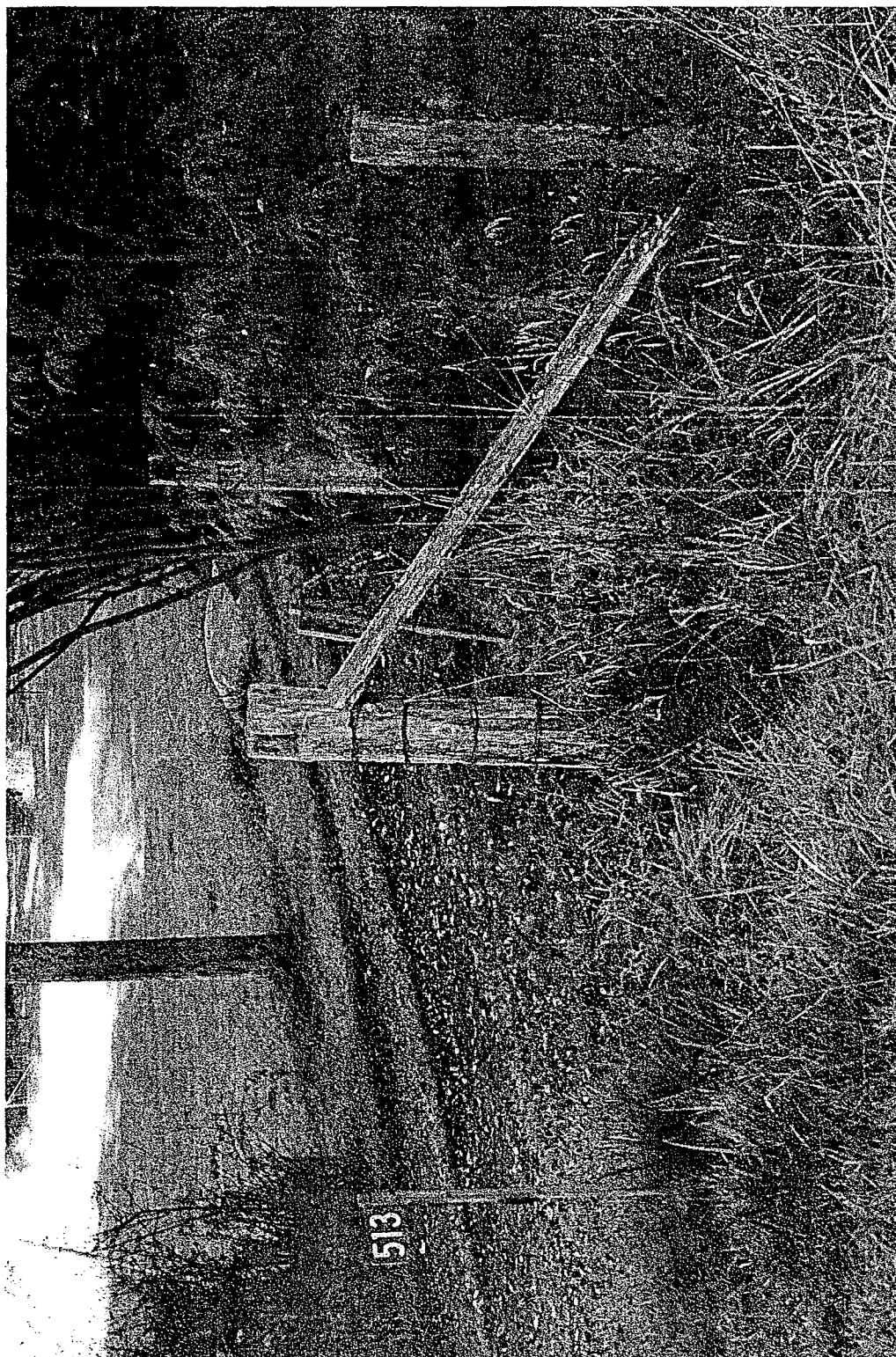
24 By:   
25 Dan Wornac, WSBA # 36394

~~10/2/00~~

CLALLAM COUNTY SUPERIOR COURT CLERK	
FILE	Vanderhoof vs Mills
CASE	10 2 00356
PLA	EXHIBIT NO. 7
ADMITTED	REFUSED
WITHDRAWN	NOT OFFERED

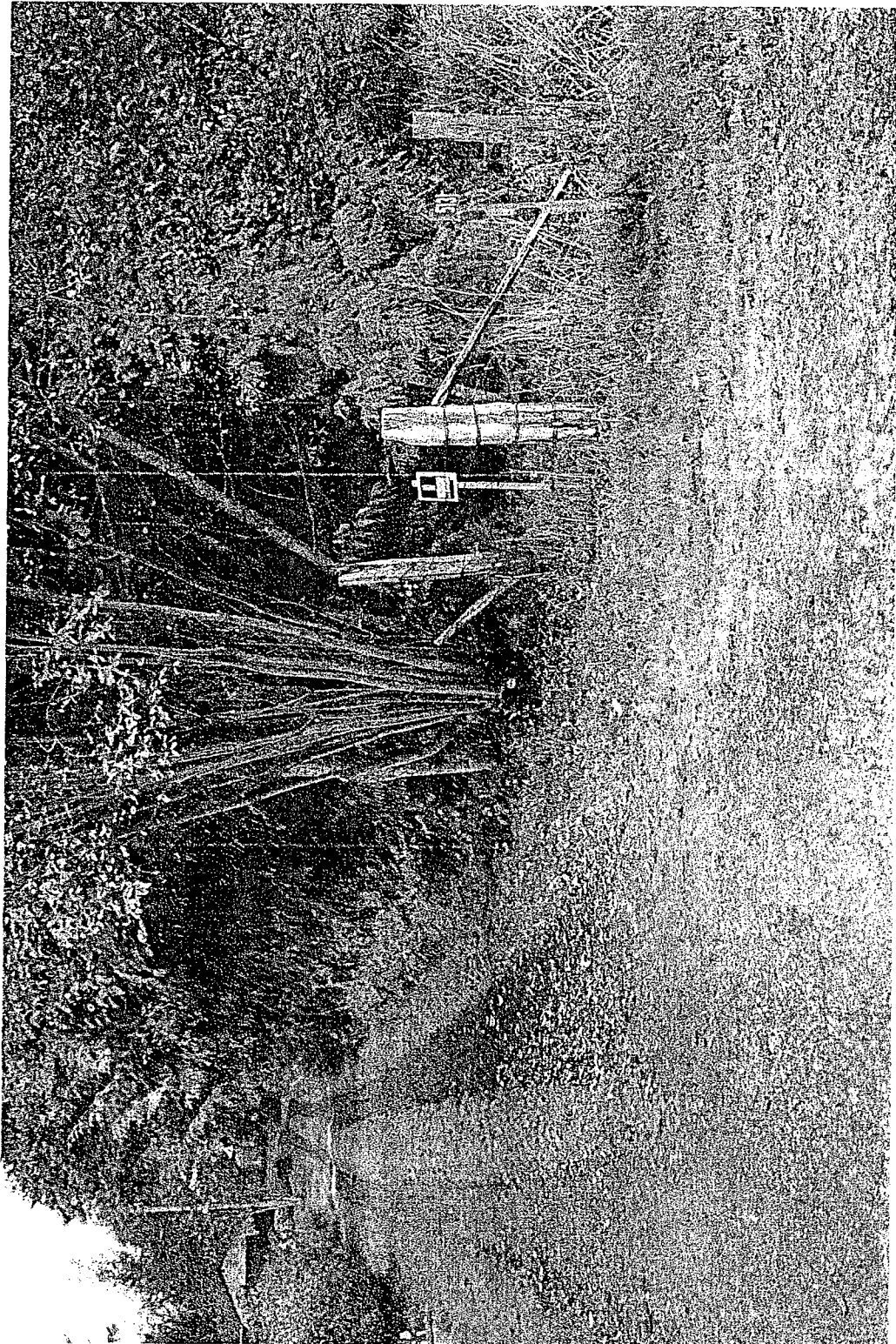


STATE OF ALABAMA COUNTY SUPERIOR COURT CLERK  
Vanderhooft vs Mills  
10 2 00356  
Pls EXHIBIT NO. 9  
Date of Court Ruling 11-14-91  
8 ADMITTED REFUSED  
WITHDRAWN NOT OFFERED



A 16

SEALAM COUNTY SUPERIOR COURT CLERK  
NAME Vanderhoof vs Mills  
NO. 10 2 00333  
PK EXHIBIT NO. 10  
DATE FILED 11-14-11  
ADMITTED REFUSED  
WITHDRAWN NOT OFFERED



STATE OF CALIFORNIA SUPERIOR COURT CLERK  
Vanderhoof vs. Mills  
10 2 00356  
Pls  
12  
11 14 11



1999 1036950

Clallam  
County

WHEN RECORDED RETURN TO:  
Jane E. Vanderhoof  
Peter Vanderhoof  
Gerald W. Morris & Marilyn Davis  
174 Madigan Place  
Sequim, Wa. 98382

Clallam Title Co.  
99 OCT -1 PM 12:07  
CLALLAM COUNTY WASH.  
BY DMH DEPUTY

CLALLAM TITLE COMPANY

P-4245-CN / 75560

STATUTORY WARRANTY DEED

THE GRANTORS H. RICHARD LILJEDAHL AND JEAN LILJEDAHL, HUSBAND AND WIFE  
for and in consideration of Ten dollars and other good and valuable consideration  
in hand paid, convey and warrant to JANE E. VANDERHOOF, A SINGLE WOMAN, PETER  
VANDERHOOF, A SINGLE MAN, AND GERALD W. MORRIS AND MARILYN DAVIS, HUSBAND AND  
WIFE

the following described real estate, situated in the County of Clallam, State  
of Washington:

SEE THE ATTACHED LEGAL DESCRIPTION ON EXHIBIT "A" WHICH BY THIS REFERENCE IS MADE  
A PART HEREOF.

THE GRANTORS HEREIN ALSO CONVEY WATER RIGHTS, IF ANY, WHICH MAY BE APPURTENANT  
TO THE PROPERTY DESCRIBED HEREIN INCLUDING CRESCENT WATER SHARE NO. 104.

ABBREVIATED LEGAL: Tracts 7, 10 and 15 in Sec 11, T30N, R8W WWM, of Puget Sound  
Mill and Timber Company's Port Crescent Farm and Dairy Tracts, Vol 1, pg 96 1/2.

COUNTY ASSESSOR'S PARCEL NOS. 08-30-11-120200, 08-30-11-120300, 08-30-11-130000,  
08-30-11-130100 AND 08-30-11-130200

SEE THE ATTACHED EXHIBIT "B" FOR MATTERS WHICH TITLE WILL REMAIN SUBJECT TO

Dated this 17th day of September, 1999

DATE  
PAID

OCT 01 1999

AMOUNT 395,000.00  
COUNTY TREASURER  
BY R. Fern

H. RICHARD LILJEDAHL

JEAN LILJEDAHL

STATE OF WASHINGTON )

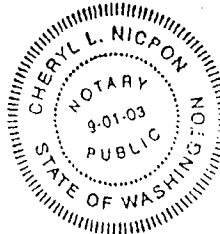
SS

COUNTY OF CLALLAM )

On this day personally appeared before me H. RICHARD LILJEDAHL AND JEAN LILJEDAHL  
to me known to be the individuals described in and who executed the within and  
foregoing instrument, and acknowledged that they signed the same as their free  
and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 20<sup>th</sup> day of Sept., 1999

NOTARY PUBLIC in and for the State of Washington,  
Residing at Port Angeles  
My commission expires 6-1-2003  
PRINTED NAME OF NOTARY Cheryl L. Nicpon



CLALLAM TITLE CO.  
P-4245-CN / 75560

ATTACHED TO AND MADE A PART OF STATUTORY WARRANTY DEED DATED SEPTEMBER 17, 1999,  
EXECUTED BY H. RICHARD LILJEDAHN AND JEAN LILJEDAHN, HUSBAND AND WIFE, AS  
GRANTORS, IN FAVOR OF JANE E. VANDERHOOF, PETER VANDERHOOF AND GERALD W. MORRIS  
AND MARILYN DAVIS, AS GRANTEEES

EXHIBIT "A"

LEGAL DESCRIPTION:

PARCEL A:

Tracts 7 and 10 in Section 11, Township 30 North, Range 8 West, W.M.  
of Puget Sound Mill and Timber Company's Port Crescent Farm and  
Dairy Tracts, as per Plat thereof recorded in Volume 1 of Plats,  
page 96 1/2, records of Clallam County, Washington,  
EXCEPT that portion of said Tracts 7 and 10 described as follows:  
Beginning at a point in the West line of said Tract 10 a distance of  
52 feet South of the Northwest corner thereof;  
Thence East parallel with the North line of said Tract 10 a distance  
of 210 feet;  
Thence North parallel with the West line of Tracts 7 and 10 a  
distance of 89 feet, more or less, to the Southerly line of a  
private road now in use on said Tract 7;  
Thence Westerly along the Southerly line of said private road to the  
West line of said Tract 7;  
Thence South along the West line of Tracts 7 and 10 a distance of  
119 feet, more or less, to the POINT OF BEGINNING.  
ALSO EXCEPT the West 30 feet of the South half of the Northwest  
quarter of the Northeast quarter conveyed to Clallam County for road  
purposes by Deed recorded January 3, 1969 under Auditor's File No.  
386807, records of Clallam County, Washington.  
ALSO EXCEPT that portion thereof conveyed to Dana G. Lothrop and  
Joyce M. Lothrop, husband and wife, by Deed recorded August 27, 1971  
under Auditor's File No. 405954, records of Clallam County,  
Washington, being more particularly described as follows:  
That portion of Tract 7 in Section 11, Township 30 North, Range 8  
West, W.M. of Puget Sound Mill and Timber Company's Port Crescent  
Farm and Dairy Tracts, as per Plat thereof recorded in Volume 1 of  
Plats, page 96 1/2, records of Clallam County, Washington, described  
as follows:  
Beginning at the Northwest corner of said Tract 7;  
Thence South along the West line thereof 208 feet;  
Thence East parallel with the North line of said Tract 7 a distance  
of 880 feet;  
Thence North 208 feet to the North line of said Tract 7;  
Thence West along said North line 880 feet to the POINT OF  
BEGINNING.  
EXCEPT the West 30 feet for County Road.

PARCEL B:

Tract 15 of Puget Sound Mill and Timber Company's Port Crescent Farm  
and Dairy Tracts, according to Plat thereof recorded in Volume 1 of  
Plats, page 96 1/2, records of Clallam County, Washington.

Situate in the County of Clallam, State of Washington.

## EXHIBIT A

THAT PORTION OF TRACT 7, PORT CRESCENT FARM AND DAIRY TRACTS AS  
PER PLAT RECORDED IN VOLUME 1 OF PLATS, PAGE 96 1/2, RECORDS OF  
CLALLAM COUNTY, WASHINGTON, IN SECTION 11, TOWNSHIP 30 NORTH,  
RANGE 08 WEST, W.M., DESCRIBED AS FOLLOWS:  
BEGINNING AT THE NORTHWEST CORNER OF SAID TRACT 7;  
THENCE SOUTH ALONG THE WEST LINE THEREOF 208 FEET;  
THENCE EAST PARALLEL WITH THE NORTH LINE OF SAID TRACT 7 A  
DISTANCE OF 880 FEET;  
THENCE NORTH 208 FEET TO THE NORTH LINE OF SAID TRACT 7;  
THENCE WEST ALONG SAID NORTH LINE 880 FEET TO THE POINT OF  
BEGINNING;  
EXCEPT THE WEST 30 FEET FOR COUNTY ROAD.  
SITUATE IN CLALLAM COUNTY, STATE OF WASHINGTON.

CLARK COUNTY SHERIFF'S OFFICE  
Vanderhoof vs Mills  
10 2 00356  
Plc  
11-19-11  
RECEIVED  
CLARK COUNTY SHERIFF'S OFFICE

A

A Service of  
Transamerica Corporation

405954

Filed for Record at Request of

Name

Address

City and State

 R1 Box 265  
 P.A.

RECORDED IN CLALLAM CO.

OF Dana G. Lothrop

RECORDED IN CLALLAM CO.

1971 AUG 27 PM 3:38

362 578

 LICE G. THORPE, AUDITOR  
 CLALLAM COUNTY, WASH.  
 BY *[Signature]* DEPUTY

405954

## Statutory Warranty Deed

Form 457 - REV

THE GRANTOR

R. Richard Liljedahl and Jean Liljedahl, his wife,

for and in consideration of Four Thousand Dollars

in hand paid, conveys and warrants to Dana G. Lothrop and Joyce M. Lothrop, his wife,

the following described real estate, situated in the County of Clallam, State of Washington:

That portion of Tract 7 in Section 11, Township 30 North, Range 8 West W. M. of Puget Sound Mill and Timber Company's Port Crescent Farm and Dairy Tracts, as per plat thereof recorded in Volume 1 of Plats, page 963, records of Clallam County, Washington, described as follows:

Beginning at the northwest corner of said Tract 7; thence South along the west line thereof 208 feet; thence East parallel with the north line of said Tract 7 a distance of 880 feet; thence North 208 feet to the north line of said Tract 7; thence West along said north line 880 feet to the point of beginning, EXCEPT the West 30 feet for County Road.

Excise Tax paid October 23, 1970, receipt No. 6969.


 NO. 6969  
 CLALLAM COUNTY  
 TRANSACTION EXCISE TAX  
 Oct 26, 1970  
 PAID AUG 27 1971  
 AMOUNT \$4000.00  
 COUNTY TREASURER  
 BY *[Signature]*

Dated this

27th

day of

October August

, 1970.

STATE OF WASHINGTON,

County of Clallam

On this day personally appeared before me H. Richard Liljedahl and Jean Liljedahl, his wife, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 27

day of October August, 1970.

 Notary Public in and for the State of Washington,  
 residing at Port Angeles.

VOL 362 PAGE 578

A 25